



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Industrial Packaging Co., Inc.

File: B-243196

Date: May 13, 1991

Paul L. Oshirak, II, for the protester.
Edward F. Nuebel, for Allied Processors, Inc., and Valentin Loureiro, for Cap City Products Co., Inc., interested parties.
Christy L. Gherlein, Esq., General Services Administration, for the agency.
Paula A. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

BIGGEST

Protest to the General Accounting Office that requirement for other than a dry-blended dishwashing compound is unduly restrictive of competition and that the requirement should have been set aside for small business concerns is dismissed as untimely since the initial agency-level protest was untimely filed after bid opening.

DECISION

Industrial Packaging Co., Inc. protests as unduly restrictive of competition a requirement for other than a dry-blended dishwashing compound in invitation for bids (IFB) No. TETC-90-SF-7904, issued by the General Services Administration. The dishwashing compound called for in Items 1-5, was to be supplied in accordance with a commercial item description contained in the solicitation. Industrial also challenges the agency's decision not to set aside this acquisition for small business concerns.

We dismiss the protest.

The solicitation specified 11:00 a.m. on March 6, 1991, as the time and date for bid opening. Industrial's bid was sent by United States Postal Service Express Mail and was received in

the bid opening room at 12:45 p.m. on March 6. The agency determined that the late delivery of Industrial's bid was not due to government mishandling and, therefore, Industrial's bid was rejected. The protester also sent another United States Postal Service Express Mail package to the agency at the same time it sent its bid. This package, which contained an agency-level protest, was received by the agency's procurement division at 11:15 a.m., and was opened by an employee in the procurement division at 11:19 a.m. on March 6. Industrial filed its protest with our Office in the afternoon of March 6, asserting the identical grounds of protest as that raised in the agency-level protest.

Under our Bid Protest Regulations, protests concerning alleged apparent solicitation improprieties must be filed either with the contracting agency or this Office prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1991); Herndon & Thompson, B-240748, Oct. 24, 1990, 90-2 CPD ¶ 327. As Industrial acknowledges, it did not file a protest with the agency until after bid opening, and since its initial agency-level protest was untimely, Industrial's subsequent protest to our Office is also untimely. See 4 C.F.R. § 21.2(a)(3); Novitas, Inc.--Recon., B-238178.2, Feb. 23, 1990, 90-1 CPD ¶ 220; Darome Connection, B-230629, May 16, 1988, 88-1 CPD ¶ 461.

Industrial attributes the late submission of both its bid and its protest to its "hesitation on deciding to make known our objections and lack of clarity of instructions in participating in [the bid protest process]." However, a protester is on constructive notice of the rules concerning the proper time for filing a protest since our regulations are published in the Federal Register; thus, a protester's lack of knowledge of our filing requirements will not convert an untimely protest to a timely one. Chapman Smidt Hardware, Inc.--Recon., B-237888.2, Jan. 8, 1990, 90-1 CPD ¶ 35.

The protest is dismissed.



Paul I. Lieberman
Assistant General Counsel